

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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THE GAP, INC., and	:	
GAP (APPAREL) LLC,	:	07 Civ. 9614 (AKH)
	:	
Plaintiffs, and	:	ECF Filing
Counterclaim Defendants	:	
	:	
-against -	:	DECLARATION OF LISA WARNER
	:	IN SUPPORT OF G.A.P
G.A.P ADVENTURES INC.,	:	ADVENTURES INC.'S MOTIONS TO
	:	AMEND OR ALTER THE PERMANENT
Defendant, and	:	INJUNCTION AND ORDER AND TO
Counterclaim Plaintiff.	:	SUSPEND OR STAY THE
	:	INJUNCTION PENDING APPEAL
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I, Lisa Warner, do hereby declare as follows under penalty of perjury:

1. I am currently the Senior Marketing Manager of G.A.P Adventures, the defendant in this litigation. I have held this position since Feb 2010.

2. I have been working in marketing for about 8 years, having held various positions in the U.K. and Canada. In 1995, I earned my university degree in Management Studies and English Literature from University of Aberdeen in Scotland. I later was awarded a post-graduate diploma in Marketing from the Chartered Institute of Marketing in the UK in 2006.

3. In my current position, I am involved in many aspects of the marketing and public relations of G.A.P Adventures. I am responsible for all of the off-line and on-line marketing channels (including advertising). I also handle marketing to the trade and am the primary liaison with our global marketing teams. Of particular relevance to this declaration, I oversee all of the “social media” accounts of G.A.P Adventures including YouTube and LinkedIn.

4. G.A.P Adventures does not use YouTube or LinkedIn to sell trips. Nor does it even make offers to sell trips on these social media sites. They are used solely to educate viewers about the tours we provide and the culture of our company. People wishing to book tours must visit the company’s official website, a travel agent, a third party travel website like www.expedia.ca, or speak with a representative at a call center to make reservations.

5. It is my understanding that G.A.P Adventures intends to adopt a new name in the United States in the coming months, but it is permitted to continue to use the G.A.P Adventures name and trademark everywhere else in the world. Therefore, G.A.P Adventures

will create accounts using its new name for web users in the United States on our social media sites like YouTube and LinkedIn.

6. However, I have been informed that G.A.P Adventures will continue to use its current accounts on the YouTube and LinkedIn so that non-U.S. subscribers or followers can simply maintain their status on the existing sites without being forced to make any changes to their accounts.

A. You Tube

7. On You Tube, a user can create a “channel”, and other users can subscribe to the channel. All subscribers then receive notifications when new content is posted. On YouTube, the content is primarily video or audio files.

8. On YouTube, G.A.P Adventures has two different channels. The first is our “main channel” (www.youtube.gapadventures) and the other is our “culture channel” (www.youtube.gapadventures/gapadventuresculture).

9. Our main channel is traditionally used for posting content such as travel videos. These videos are aimed at describing the trips and adventures that are guided by G.A.P Adventures to anyone who may be interested in traveling with us. We have 225 subscribers to this channel at present. However, any visitor to the channel can, from anywhere around the world, view the content – you need not be a “subscriber” to access the videos that G.A.P Adventures has uploaded. The content on this channel has received about 40,000 total views since its creation in November 2006 from both subscribers and non-subscribers.

10. Our culture channel is used primarily for internal purposes to promote our corporate culture with our employees and staff throughout the world. For example, we host contests in which employees may post their own video describing their experiences with G.A.P

Adventures and the employee with the best video is awarded a place at a G.A.P Adventures event such as the annual general meeting or other employee events throughout the world. This channel has the majority of the G.A.P Adventures content on YouTube. To date, we have 79 subscribers to this channel and total views, by both subscribers and non-subscribers, are just over 27,500 since November 2009. Although this channel is focused on the internal activities of G.A.P Adventures, anyone in the world can access it.

11. Other than our employees, we do not know who our YouTube subscribers are and have no way to particularly identify the countries in which they reside. Moreover, because even non-subscribers can easily access our channels and view the content uploaded there, it is impossible to identify all of the people accessing our channels or the countries in which they reside.

12. When the new U.S. name and trademark is created, G.A.P Adventures will initiate a new account on YouTube using and displaying the new U.S. name and trademark. The new U.S. channel will condense the content that would currently exist on the two separate channels.

13. G.A.P Adventures cannot automatically switch all U.S. subscribers from subscribing to its old accounts in Canada, which will continue to use G.A.P Adventures. We will make an effort to have U.S. subscribers switch to watch any G.A.P Adventures content on the page containing its new name and trademark. Specifically, G.A.P Adventures will put up posts encouraging U.S. users to subscribe at the new account.

14. Although G.A.P Adventures will do everything it can to encourage U.S. users to switch to follow the account with the new U.S. name and trademark, it is not possible for G.A.P Adventures, or any user on YouTube, to absolutely prohibit U.S. users based on their

geography from subscribing to the foreign account which will retain use of the G.A.P Adventures name and trademark.

15. The process of creating the new channel aimed at U.S. residents will be time-consuming. Although, setting up the new account on YouTube with the new U.S. name and trademark will not take long once the name is chosen and the logo is created, locating, editing and uploading the new content will take time.

16. Specifically, the videos which are available for viewing on our channels may contain the name G.A.P Adventures or the “gap adventures” logo in different ways. The name and logo may be included in “bumpers”. Bumpers are a way for us to include our branding on our videos. For example, the G.A.P Adventures logo often appears throughout an entire video on one of the bottom corners, or it can sometimes appear on the opening and/or closing screens for the videos. We also may have instances in which the name G.A.P Adventures is mentioned on the video by a tour guide, or a trip participant. Finally, it is possible that our logo may be included in the video itself, for example on one of trucks that are used on the tours.

17. Because the name and logo appears in these different ways, we will need to first identify, to the extent possible, the original video so that it can be edited. Unfortunately, I estimate that we will be unable to locate about 25% - 75% of the original video. Next, we will have to edit the video to (a) replace the current branding with the new branding, (b) remove footage in which a person on-screen refers to “gap” or G.A.P Adventures (or otherwise do a voice-over of those words with the new name), and (c) blur out or cut out any footage containing a physical view of our current branding.

18. I estimate that if one employee is dedicated to this full-time, all of this work with respect to YouTube and the video content will take a minimum of one week. In order

to try to locate all volumes of the original videos, the process could take a minimum of one month.

B. LinkedIn

19. LinkedIn is primarily a networking site that allows people to “link” or “connect” to each other or businesses that they are interested in. On a LinkedIn account, a person or company can post all of their identifying information, including contact info, website, links to their other social media sites like Facebook, or even link to related companies or individuals (for example, employees of G.A.P Adventures could link their personal profile with that of the corporate profile).

20. G.A.P Adventures has a corporate account for LinkedIn. There are currently 688 followers. The primary use (and really only use at this time) of the G.A.P Adventures LinkedIn account is for recruitment. G.A.P Adventures uses its corporate LinkedIn account to share job postings for office-based jobs within the company. Jobs may be located in any one of our primary regions – Australia, Canada, the U.K. or the U.S.

21. We intend to set up a second corporate account on LinkedIn which will use the new U.S. name. We will send an “In-mail” notification to all of our followers informing them that, if they reside in the U.S., they should switch to following us on our new account.

22. However, as with all social media, we cannot force any individual follower on LinkedIn to stop following us on our Canadian-based account that uses our current name. Similarly, we cannot stop U.S. residents from accessing our Canadian LinkedIn profile.

23. Furthermore, there are about 150 non-U.S. G.A.P Adventures employees whose personal LinkedIn profiles list them as working at “G.A.P Adventures”. Their profiles

will continue to be accessible by U.S. users. There is no way for us or our employees to block access by U.S. users.

24. There are a handful of G.A.P Adventures employees based in the U.S. with LinkedIn Profiles. However, while we can encourage all of our U.S. employees to use the new name on their current profiles, they may continue to have a reference to “G.A.P Adventures” on their profile for the period when the company was known by this name.¹

25. I expect that creating the new corporate account on LinkedIn would take only a few days. However, there is no process which can be guaranteed to eliminate all views by U.S. users of the G.A.P Adventures name or logo.

26. If global name changes were made on YouTube and LinkedIn, it would mean that all G.A.P Adventures communications to its subscribers in every country of the world (*i.e.*, not just the United States) would not include its name G.A.P Adventures in its address or username.

III. Marketing videos

27. As explained above, the videos present on YouTube need to be edited so that all references to the current name are removed. As with the YouTube content, our marketing videos will need to be edited to remove all references to “gap” or G.A.P Adventures. Our marketing videos are shown to visitors to our New York Concept Store and also are


¹ I am also aware of a “group” that was created by a former employee called “Gap Adventures Travel”. This is a group that people who share an interest in travel, and particularly G.A.P Adventures travel, can join. Members of the group typically post information on travel opportunities and experiences. However, this is not a group operated by G.A.P Adventures and we do not control the account or content of that group. We intend to set up a similar group for U.S. people to join that uses the new name, and we will post a request on that group to suggest that U.S. members should join the U.S. group instead.

distributed to our partners, such as travel agents, who then show the videos to individuals interested in our tour offerings.

28. There are more than 100 videos that are available in the U.S. market either at the Concept Store or with our partners. The videos will have to be located, edited as described above, and new videos will need to be distributed to our New York Concept Store and all of our U.S. partners. We will dedicate one employee to this task full time so that it can be completed in just under 2 months.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 15, 2011



Lisa Warner